HIGH COURT OF UTTRANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 884 of 2004 (MS)
Yogendra Singh & another
Vs.
Motor Accident Claims Tribunal,
Pauri & others.

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 02-12-2004

Initial of Judge

HIGH COURT OF UTTRANCHAL AT NAINITAL

Writ Petition No. 884 of 2004 (MS)

Yogendra Singh & another ..... Petitioners

Versus

Motor Accident Claims Tribunal, Pauri &
Others ..... Respondents

Dated: December 2 , 2004

Sri G.S. Negi and Sri A.S. Bhandari Advocate for the petitioners
Sri Raman Sah, Advocate for the respondents.

Hon. Rajesh Tandon J.

Heard the learned counsel for the parties.

By the present writ petition the petitioners have prayed for a writ of certiorari quashing the order dated 17.6.2004 passed by the Motor Accident Claims Tribunal, Pauri Garhwal.

Briefly stated a claim petition has been filed by Smt. Shashi Devi and others against the petitioners for grant of compensation, on account of death of Sri Gajendra Singh Nagi in a motor vehicle accident. The opposite parties petitioners were served sufficiently but they did not file any written statement nor appeared before the claims Tribunal to contest the claim petition. The Claim petition, therefore, proceeded ex parte against the opposite parties petitioners and the Claims Tribunal passed ex parte judgment and award against the opposite parties.

The opposite parties petitioners moved the application under Order 9 Rule 13of the Code of Civil Procedure for setting

aside the ex parte decree along with application under section 5 of the Limitation Act for condonation of delay in filling the application. The Claims Tribunal considered the application under section 5 of the Limitation Act and concluded that the opposite parties petitioners have failed to establish that they were prevented by sufficient cause from appearing in the Court when the case was decided ex parte and dismissed the application under section 5 of the Limitation Act as well as application under Order 9 Rule 13 of the Code of Civil Procedure. Feeling aggrieved the present writ petition has been filed.

The ex parte judgment was passed by the Claims Tribunal on 16.1.2003. The petitioners have moved the application under Order 9 Rule 13 C.P.C. on 2.6.2003. The ground taken by the petitioners for condonation of delay in filing the application for setting aside ex parte decree is that petitioner no.1 went to Dehradun for his treatment along with his son petitioner no.2 Manoj Kumar petitioner no. 2 came back from Dehradun on 4.4.2003. He came to know about the ex parte order against him and he applied for the copy of order on 17.4.2003. He again went to Dehradun for taking his ailing father back from Dehradun and on 29.5.2003 he got the application prepared from his counsel and filed the same in the Court on 2.6.2003.

The Apex Court in the case N. Balakrishnan v. M. Krishnamurthy Supreme Court & Full bench Rent Cases, 1998 page 427 held as under:

"Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by

reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean aainst acceptance of the explanation. While condoning the delay, the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses. It would be a salutary guideline that when courts condone the

delay due to laches on the part of the applicant, the court shall compensate the opposite party for his loss.

The need of society is that there should be justice-oriented approach and the application should not be rejected only on the ground of technicalities. The Apex Court has held in (2001) 8 SCC 151, M.S. Grewal vs. Deep Chand Sood as under:

"Law Courts will lose their efficicacy if they cannot possibly respond to the need of the society- technicalities there might be many but the justice-oriented approach ought not to be thwarted on the basis of such technicality since technicality cannot and ought not to outweigh the course of justice."

The interest of justice requires that the parties should be given opportunity to contest the case on merits and the application for setting aside the ex parte decree should not be rejected on the ground of limitation.

In view of the aforesaid observation, the writ petition is allowed. The delay in filing the application under Order 9 Rule 13 of the Code of Civil Procedure is condoned. The Claims Tribunal is directed to decide the claim petition within three months after the receipt of the certified copy of this order.

There will be no order as to costs.

December 2, 2004 **(Rajesh Tandon J.)**

***** Dhyani